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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91219077
Party	Plaintiff Tristar Products, Inc.
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Date	03/13/2015
Attachments	second amended notice of opposition.pdf(143737 bytes) CopperWear(TESS).pdf(51499 bytes) CopperWearRegistration.pdf(1964011 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Tristar Products, Inc.)	
)	
Opposer,)	Opposition No. 91219077
)	
v.)	Application Serial No.
)	86/232781
)	
Telebrands Corp.,)	
)	
Applicant.)	
)	

SECOND AMENDED NOTICE OF OPPOSITION

In accordance with decision by the Trademark Trial and Appeal Board dated March 2, 2015, Opposer hereby files a Second Amended Notice of Opposition.

Opposer, Tristar Products, Inc. a corporation organized under the laws of Pennsylvania and located at 492 Route 46 East, Fairfield, NJ 07004, believes that it will be damaged by registration of COPPER HANDS (“Mark”), which Mark is the subject of U.S. Federal Trademark Application Serial No. 86/232781 (“Application”) filed by Telebrands Corp., a New Jersey corporation, having an address at 79 Two Bridges Road, Fairfield, New Jersey 07004 and which Mark was published for opposition in the *Official Gazette* on July 1, 2014. An extension of time was granted by the Trademark Office for Opposer to file an Opposition by October 29, 2014.

The grounds for the opposition are as follows:

COUNT I - Section 2(d) of the Trademark Act –Likelihood of Confusion

1. Applicant seeks to register COPPER HANDS for copper-infused compression gloves, in International Class 25.
2. The opposed Application was filed on March 26, 2014 under Section 1(b) of the Trademark Act.
3. Opposer has made substantially extensive and exclusive use of the Mark COPPER WEAR in word form and design form at common law at least as early as August 1, 2013 in connection with clothing, namely, socks, shirts, tights, sleeves, undershorts, shorts, and gloves, all the foregoing goods featuring copper-infused fabric.
4. Since its initial adoption and use, Opposer has made a substantial investment and effort in marketing and promoting its products and services offered under Opposer's COPPER WEAR Mark.
5. As a result of Opposer's substantial investment and effort in marketing and promoting its products and services offered under Opposer's COPPER WEAR Mark, the mark has become strong and well-known within the field of compression clothing.

6. As a result of the widespread use in interstate commerce by Opposer of its COPPER WEAR Mark in connection with clothing, namely, socks, shirts, tights, sleeves, undershorts, shorts, and gloves, all the foregoing goods featuring copper-infused fabric, the Mark has become highly distinctive, has acquired distinctiveness and secondary meaning, and is well known and recognized by the relevant consuming public as identifying high quality goods which have their origin exclusively with Opposer.
7. Opposer registered the domain name www.copperwear.com on April 27, 2007.
8. Opposer is the owner of U.S. Trademark Application Serial No. 85/826741 for the mark COPPER WEAR for clothing, namely, socks, shirts, tights, sleeves, undershorts, shorts, and gloves, all the foregoing goods featuring copper-infused fabric, in International Class 25. A current printout of information from the electronic database records of the USPTO showing the current status and title of the application accompanies this Notice of Opposition.
9. Opposer filed U.S. Trademark Application Serial No. 85/826741, now U.S. Trademark Registration No. 4,675,876, on January 18, 2013 under Section 1(b) of the Trademark Act.
10. Opposer filed a Statement of Use in U.S. Trademark Application Serial No. 85/826741 on November 12, 2014. In the Statement of Use, Opposer claims

a date of first use of August 1, 2013 and a date of first use in commerce of October 17, 2013.

11. Opposer's filing date of January 18, 2013 is prior to Applicant's filing date of March 26, 2014.

12. Opposer's clothing, namely, socks, shirts, tights, sleeves, undershorts, shorts, and gloves, all the foregoing goods featuring copper-infused fabric in connection with its trademark for COPPER WEAR is highly related and identical to the copper-infused compression gloves identified in Application Serial No. 86/232781 for the mark COPPER HANDS. On information and belief, Opposer's goods and Applicant's goods are offered to the same classes of customers through the same channels of trade.

13. Applicant's Mark, COPPER HANDS, is confusingly similar to Opposer's COPPER WEAR mark, and is likely to cause confusion.

14. Applicant's Mark, COPPER HANDS, is listed in the identical International Class 025 as the Opposer's trademark COPPER WEAR.

15. If Applicant uses the mark COPPER HANDS with the copper-infused compression gloves identified in Application Serial No. 86/232781, such use would be likely to cause confusion, mistake, and/or deception of the relevant trade and public. Customers and potential customers are likely to believe that

Applicant's goods offered under the Mark emanate from, or are licensed or approved by, Opposer, when that is not the case. Such confusion, mistake, and/or deception would be a source of damage to Opposer.

16. If Applicant is granted the registration herein opposed, it would thereby obtain a prima facie right to use the mark COPPER HANDS which is confusingly similar to the Opposer's mark, which would be a further source of damage to Opposer.

17. Applicant's mark, COPPER HANDS, is likely to cause confusion with Opposer's trademark COPPER WEAR based upon a federal registration and/or common law rights, and therefore Applicant's Mark should be refused registration, rendered unenforceable, and/or restricted under Section 2(d) of the Trademark Act.

COUNT II – Section 2(e)(1) of the Trademark Act – Merely Descriptive and/or Generic

18. Opposer hereby incorporates by reference the allegations of paragraphs 1-17 above.

19. Applicant submits that the Mark COPPER HANDS is merely descriptive and/or generic under Section 2(e)(1) of the Trademark Act.

20. The opposed Application was filed on March 26, 2014 under Section 1(b) of the Trademark Act on an intent-to-use filing basis.
21. Applicant seeks to register the Mark COPPER HANDS for copper-infused compression gloves in International Class 025.
22. In accordance with authorization granted by Applicant on May 19, 2014, the Application was amended to disclaim COPPER portion of the COPPER HANDS Mark.
23. Applicant's Mark contains the portion HANDS which, when applied to Applicant's gloves, is merely descriptive and/or generic because it describes or represents an ingredient, quality, characteristic, function, feature, purpose, or use of the specified goods.
24. Opposer submits that the entire Mark COPPER HANDS is therefore merely descriptive and/or generic because it describes or represents an ingredient, quality, characteristic, function, feature, purpose or use of the specified goods, namely copper-infused compression *gloves*.
25. Opposer has widespread sale in interstate commerce of clothing, namely, socks, shirts, tights, sleeves, undershorts, shorts, and *gloves*, all the foregoing goods featuring copper-infused fabric.

26. Opposer submits it has at least an equal right to use the Mark since Applicant's Mark is merely descriptive and/or generic.
27. Opposer submits that it has a personal interest in the outcome beyond that of the general public. Opposer believes that it will be damaged by registration of Applicant's Mark for copper-infused compression gloves by preventing the Opposer from competing effectively in the marketplace.
28. Opposer alleges that Applicant's Mark is merely descriptive and/or generic under Section 2(e)(1) of the Trademark Act and therefore unregistrable and should be refused registration, rendered unenforceable, and/or restricted.

WHEREFORE, Opposer believes that it will be damaged by registration of said Mark, COPPER HANDS, and prays that this Opposition be sustained in favor of Opposer, that Application Serial No. 86/232781 be refused registration, rendered unenforceable, and/or restricted based upon at the least the grounds set forth above.

The Applicant reserves the right to add additional counts beyond those recited above.

Opposer hereby appoints Barlow, Josephs & Holmes Ltd., a law firm composed of Daniel J. Holmander, Stephen J. Holmes, Cheryl A. Clarkin, David R. Josephs, Robert Lichter, and Joshua A. Stockwell, to act as attorneys for Opposer herein, with full power to prosecute said Opposition, to transact all relevant business with the Patent and

Trademark Office and in the United States Courts and to receive all official communications in connection with this Opposition.

Respectfully submitted,

Tristar Products, Inc. (Opposer)

/daniel j. holmander/

Cheryl A. Clarkin, Esq.

Daniel J. Holmander, Esq.

Counsel for Opposer

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Dated: March 13, 2015

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djh@barjos.com

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **SECOND AMENDED NOTICE OF OPPOSITION** has been served on Applicant's counsel, at the following addresses of record, by first class mail, postage prepaid, this 13th day of March 2015:

Applicant's Counsel

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Counsel for Opposer



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Word Mark	COPPER WEAR
Goods and Services	IC 025. US 022 039. G & S: clothing, namely, socks, shirts, tights, sleeves, undershorts, shorts, and gloves, all the foregoing goods featuring copper-infused fabric. FIRST USE: 20130801. FIRST USE IN COMMERCE: 20131017
Mark Drawing Code	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code	26.17.01 - Bands, straight; Bars, straight; Lines, straight; Straight line(s), band(s) or bar(s) 26.17.06 - Bands, diagonal; Bars, diagonal; Diagonal line(s), band(s) or bar(s); Lines, diagonal
Serial Number	85826741
Filing Date	January 18, 2013
Current Basis	1A
Original Filing Basis	NO FILING BASIS
Published for Opposition	November 26, 2013
Registration Number	4675876
Registration Date	January 20, 2015
Owner	(REGISTRANT) Tristar Products, Inc. CORPORATION PENNSYLVANIA 492 Route 46 East Fairfield NEW JERSEY 07004
Attorney of Record	Daniel J. Holmander
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "COPPER WEAR" APART FROM THE MARK AS SHOWN

Description of Mark	The color(s) copper and grey is/are claimed as a feature of the mark. The mark consists of the wording "COPPER WEAR" in grey, with a copper-colored paintbrush-style stroke at the diagonal between the two words.
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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United States of America

United States Patent and Trademark Office

copper / wear

Reg. No. 4,675,876

Registered Jan. 20, 2015

Int. Cl.: 25

TRADEMARK

PRINCIPAL REGISTER

TRISTAR PRODUCTS, INC. (PENNSYLVANIA CORPORATION)
492 ROUTE 46 EAST
FAIRFIELD, NJ 07004

FOR: CLOTHING, NAMELY, SOCKS, SHIRTS, TIGHTS, SLEEVES, UNDERSHORTS, SHORTS, AND GLOVES, ALL THE FOREGOING GOODS FEATURING COPPER-INFUSED FABRIC, IN CLASS 25 (U.S. CLS. 22 AND 39).

FIRST USE 8-1-2013; IN COMMERCE 10-17-2013.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "COPPER WEAR", APART FROM THE MARK AS SHOWN.

THE COLOR(S) COPPER AND GREY IS/ARE CLAIMED AS A FEATURE OF THE MARK.

THE MARK CONSISTS OF THE WORDING "COPPER WEAR" IN GREY, WITH A COPPER-COLORED PAINTBRUSH-STYLE STROKE AT THE DIAGONAL BETWEEN THE TWO WORDS.

SN 85-826,741, FILED 1-18-2013.

ELLEN BURNS, EXAMINING ATTORNEY



Michelle K. Lee

Deputy Director of the United States
Patent and Trademark Office

**REQUIREMENTS TO MAINTAIN YOUR FEDERAL
TRADEMARK REGISTRATION**

**WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE
DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.**

Requirements in the First Ten Years*
What and When to File:

First Filing Deadline: You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. *See* 15 U.S.C. §§1058, 1141k. If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.

Second Filing Deadline: You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between the 9th and 10th years after the registration date.*
See 15 U.S.C. §1059.

Requirements in Successive Ten-Year Periods*
What and When to File:

You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.*

Grace Period Filings*

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

**The United States Patent and Trademark Office (USPTO) will NOT send you any future notice or
reminder of these filing requirements.**

***ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the USPTO. The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. *See* 15 U.S.C. §§1058, 1141k. However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. *See* 15 U.S.C. §1141j. For more information and renewal forms for the international registration, see <http://www.wipo.int/madrid/en/>.

NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at <http://www.uspto.gov>.